



6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Fees for Reviews of the Rule Enforcement Programs of Designated Contract

Markets and Registered Futures Associations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of 2019 schedule of fees.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) charges fees to designated contract markets and registered futures associations to recover the costs incurred by the Commission in the operation of its program of oversight of self-regulatory organization rule enforcement programs, specifically National Futures Association (“NFA”), a registered futures association, and the designated contract markets. Fees collected from each self-regulatory organization are deposited in the Treasury of the United States as miscellaneous receipts. The calculation of the fee amounts charged for 2019 by this notice is based upon an average of actual program costs incurred during fiscal year (“FY”) 2016, FY 2017, and FY 2018.

DATES: Each self-regulatory organization is required to remit electronically the applicable fee on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Anthony C. Thompson, Executive Director, Commodity Futures Trading Commission; (202) 418-5697; Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. For information on electronic payment, contact Jennifer Fleming; (202) 418-5034; Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. General

This notice relates to fees for the Commission's review of the rule enforcement programs at the registered futures associations¹ and designated contract markets ("DCM"), each of which is a self-regulatory organization ("SRO") regulated by the Commission. The Commission recalculates the fees charged each year to cover the costs of operating this Commission program.² The fees are set each year based on direct program costs, plus an overhead factor. The Commission calculates actual costs, then calculates an alternate fee taking volume into account, and then charges the lower of the two.³

B. Overhead Rate

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide overhead direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs generally consist of the following Commission-wide costs: Indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent

¹ National Futures Association is the only registered futures association.

² See Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a, and 31 U.S.C. 9701. For a broader discussion of the history of Commission fees, see 52 FR 46070, Dec. 4, 1987.

³ 58 FR 42643, Aug. 11, 1993, and 17 CFR part 1, app. B

three years (rounded to the nearest whole percent): 190 percent for FY 2016, and 175 percent for FY 2017, and 182 percent for FY 2018.

C. Conduct of SRO Rule Enforcement Reviews

Under the formula adopted by the Commission in 1993, the Commission calculates the fee to recover the costs of its rule enforcement reviews and examinations, based on the three-year average of the actual cost of performing such reviews and examinations at each SRO. The cost of operation of the Commission's SRO oversight program varies from SRO to SRO, according to the size and complexity of each SRO's program. The three-year averaging computation method is intended to smooth out year-to-year variations in cost. Timing of the Commission's reviews and examinations may affect costs—a review or examination may span two fiscal years and reviews and examinations are not conducted at each SRO each year.

As noted above, adjustments to actual costs may be made to relieve the burden on an SRO with a disproportionately large share of program costs. The Commission's formula provides for a reduction in the assessed fee if an SRO has a smaller percentage of United States industry contract volume than its percentage of overall Commission oversight program costs. This adjustment reduces the costs so that, as a percentage of total Commission SRO oversight program costs, they are in line with the pro rata percentage for that SRO of United States industry-wide contract volume.

The calculation is made as follows: The fee required to be paid to the Commission by each DCM is equal to the lesser of actual costs based on the three-year historical average of costs for that DCM or one-half of average costs incurred by the Commission for each DCM for the most recent three years, plus a pro rata share (based

on average trading volume for the most recent three years) of the aggregate of average annual costs of all DCMs for the most recent three years.

The formula for calculating the second factor is: $0.5a + 0.5vt = \text{current fee}$. In this formula, “a” equals the average annual costs, “v” equals the percentage of total volume across DCMs over the last three years, and “t” equals the average annual costs for all DCMs. NFA has no contracts traded; hence, its fee is based simply on costs for the most recent three fiscal years. This table summarizes the data used in the calculations of the resulting fee for each entity:

Table 1—Summary of Data Used in Fee Calculations

Actual Total Costs				3-year Average Actual Costs	3-Year Average Volume	Adjusted Volume Costs	2019 Assessed Fee	Refund of Over Payment from FY 2018	2019 Assessed Fee
	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>						
CANTOR	\$ -	\$60,045	\$56,551	\$38,865.55	0.00%	\$19,433	\$19,433	\$(238)	\$19,195
CBOE Futures Ex	227,059	31,026	16,033	91,372.64	1.44%	54,354	54,354	(217)	54,137
CBOT	28,720	96,442	2,296	42,486.01	30.55%	204,602	42,486	(765)	41,721
CME	372,278	472,157	235,127	359,854.31	42.65%	435,963	359,854	(3,744)	356,110
ERIS	-	53,010	33,170	28,726.90	0.01%	14,423	14,423	(211)	14,212
ICE Futures US	386,719	199,090	50,096	211,968.03	7.70%	152,203	152,203	(1,354)	150,849
MGE	14,314	42,226	438	18,992.66	0.05%	9,816	9,816	(171)	9,645
NASDAQ OMX-PBOT	-	251,200	109,413	120,204.37	0.73%	64,470	64,470	(1,034)	63,436
NODAL	-	100,600	33,162	44,587.32	0.02%	22,396	22,396	(399)	21,997
NYMEX/COMEX	242,792	212,798	3,397	152,995.57	16.37%	174,773	152,996	(1,688)	151,308
North American Derivatives Exchange Inc.	81,758	84,666	6,986	57,803.18	0.217%	30,206	30,206	(347)	29,859
OCX-One Chicago, LLC	282	36,444	61,276	32,667.15	0.256%	17,868	17,868	(165)	17,703
Subtotal	1,353,922	1,639,704	607,946	1,200,524	-	1,200,504	940,503	(10,333)	930,170
National Futures Association	282,405	660,710	507,673	483,595.99	-	-	483,596	(5,240)	478,356
Total	1,636,327	2,300,414	1,115,619	1,684,120	-	-	1,424,099	(15,573)	1,408,526

The FY 2019 fees reflect refunds of overpayments that resulted from an error regarding the amount of overhead calculated in the FY 2018 fees. As a result, the overhead factor was reduced 0.06 percent, the FY 2018 fees were recalculated, and credits in the amount of the overpayments were applied to the FY 2019 fees.

An example of how the fee is calculated for one exchange, the Chicago Board of Trade, is set forth here:

- a. Actual three-year average costs = \$42,486.
- b. The alternative computation is: $(.5) (\$42,486) + (.5) (.305465) (\$1,200,524) = \$204,602$.

- c. The fee is the lesser of a. or b.; in this case \$42,486
- d. The refund for overpayment of \$765.00 is applied, bringing the fee to \$41,721.

As noted above, the alternative calculation based on contracts traded is not applicable to NFA because it is not a DCM and has no contracts traded. The Commission's average annual cost for conducting oversight review of the NFA rule enforcement program during fiscal years 2016 through 2018 was \$483,596. The fee to be paid by the NFA for the current fiscal year is \$483,596.

II. Schedule of Fees

Fees for the Commission's review of the rule enforcement programs at the registered futures associations and DCMs regulated by the Commission are as follows:

Table 2—Schedule of Fees

	<i>3-year Average Actual Costs</i>	<i>3-Year Average Volume</i>	<i>Adjusted Volume Costs</i>	<i>2019 Assessed Fee</i>	<i>Refund of Over Payment from FY 2018</i>	<i>2019 Assessed Fee</i>
CANTOR	\$38,865.55	0.00%	\$19,433	\$19,433	\$(238)	\$19,195
CBOE Futures Ex	91,372.64	1.44%	54,354	54,354	(217)	54,137
CBOT	42,486.01	30.55%	204,602	42,486	(765)	41,721
CME	359,854.31	42.65%	435,963	359,854	(3,744)	356,110
ERIS	28,726.90	0.01%	14,423	14,423	(211)	14,212
ICE Futures US	211,968.03	7.70%	152,203	152,203	(1,354)	150,849
MGE	18,992.66	0.05%	9,816	9,816	(171)	9,645
NASDAQ OMX-PBOT	120,204.37	0.73%	64,470	64,470	(1,034)	63,436
NODAL	44,587.32	0.02%	22,396	22,396	(399)	21,997
NYMEX/COMEX	152,995.57	16.37%	174,773	152,996	(1,688)	151,308
North American Derivatives Exchange Inc.	57,803.18	0.217%	30,206	30,206	(347)	29,859
OCX-One Chicago, LLC	32,667.15	0.256%	17,868	17,868	(165)	17,703
Subtotal	1,200,524	-	1,200,504	-	(10,333)	930,170
National Futures Association	483,595.99	-	-	483,596	(5,240)	478,356
Total	<i>1,684,120</i>	-	-	1,424,099	(15,573)	1,408,526

III. Payment Method

The Debt Collection Improvement Act (DCIA) requires deposits of fees owed to the government by electronic transfer of funds. *See* 31 U.S.C. 3720. For information about electronic payments, please contact Jennifer Fleming at (202) 418-5034 or jffleming@cftc.gov, or see the CFTC website at <http://www.cftc.gov>, specifically, <http://www.cftc.gov/cftc/cftcelectronicpayments.htm>. Fees collected from each self-regulatory organization shall be deposited in the Treasury of the United States as miscellaneous receipts. *See* 7 U.S.C. 16a.

Issued in Washington, DC, on this 4th day of September, 2019, by the
Commission.

Robert Sidman,

Deputy Secretary of the Commission.

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